

§ 1610.6

§ 1610.6 Applicability.

(a) The prohibitions referred to in §§ 1610.2(a)(3) (Criminal proceedings), (a)(4) (Actions challenging criminal convictions) or (b)(11) (Prisoner litigation) of this part will not apply to the non-LSC funds of the attorney, law firm, entity of attorneys, or the public defender program or project and will not apply to funds received to support criminal or related cases accepted pursuant to a court appointment, if the Corporation or a recipient makes a contract or other arrangement for the provision of civil legal assistance with:

(1) A private attorney, law firm or state or local entity of attorneys that represents clients in criminal cases or matters,

(2) A legal aid organization that provides criminal and related legal assistance through a separately funded public defender program or project; or

(3) A legal aid organization that accepts criminal or related cases pursuant to a court appointment.

(b) If a recipient uses non-LSC funds to enter into a contract or other arrangement with another person or entity for the provision of civil legal assistance, the restrictions referred to in this part will apply to the funds transferred, but will not apply to the other non-LSC funds of the person or entity.

(c) Except as provided in paragraph (a) of this section, this part does not apply to a transfer of LSC funds. Transfer of LSC funds is governed by 45 CFR part 1627.

§ 1610.7 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

PART 1611—ELIGIBILITY

Sec.

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APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1996 POVERTY GUIDELINES

AUTHORITY: Secs. 1006(b)(1), 1007(a)(1), Legal Services Corporation Act of 1974; 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

SOURCE: 48 FR 54205, Nov. 30, 1983, unless otherwise noted.

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

Governmental program for the poor means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

Income means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

Total cash receipts include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

- (1) Cost-of-living in the locality;
- (2) The number of clients who can be served by the resources of the recipient;
- (3) The population who would be eligible at and below alternative income levels; and
- (4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

(a) A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of the national eligibility level (125% of poverty) may be provided legal assistance under the Act if:

(1) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b)(1); or

(2) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

(b) In the event that a recipient determines to serve a person whose gross income exceeds 125% of poverty, that

decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual bases for the decisions made.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. By January 30, 1984, and annually thereafter, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which shall be used in the determination of the eligibility of clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses, and in exceptional instances, with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 150 percent of the national eligibility level;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be used in the determination of the eligibility of clients under the maximum income level shall include: